

any authorized extension, the Executive Director or his designee shall make a determination and notify the appellant of his determination. If the appeal is decided in favor of the appellant the requested information shall be promptly supplied as provided in this part. If on appeal the denial of the request for records is upheld in whole or in part, the appellant shall be entitled to appeal to the Commission at its next regular meeting. In the event that the Commission confirms the Executive Director's denial the appellant shall be notified of the provisions for judicial review.

(d) If the request for records will result in a fee of more than \$25, determination letter under §401.99 shall specify or estimate the fee involved and may require prepayment, as well as payment of any amount not yet received as a result of any previous request, before the records are made available. If the fee is less than \$25, prepayment shall not be required unless payment has not yet been received for records disclosed as a result of a previous request.

(e) Whenever possible, the determination letter required under §401.99(b), relating to a request for records that involves a fee of less than \$25.00, shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter. For requests for records involving a fee of more than \$25.00, the records shall be forwarded as soon as possible after receipt of payment.

§401.110 Fees.

(a) Unless waived in accordance with the provisions of §401.111, the following fees shall be imposed for production of any record pursuant to this part.

(1) *Administrative fees.* (i) Charges for administrative fees include staff time associated with:

- (A) Processing FOIA requests;
- (B) Locating and reviewing files;
- (C) Monitoring file reviews;
- (D) Generating computer records (electronic print-outs); and
- (E) Preparing logs of records deemed non-public.

(ii) Administrative charges will be calculated as follows: Administrative charges will be billed to the requester

per quarter hour following the first quarter hour. These charges will be billed at the current, hourly paygrade rate (pro-rated for quarter hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.

(iii) Appointment rescheduling/cancellation. Requesters that do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Commission in preparing the requested records. The Commission will prepare an itemized invoice of these charges and mail it to the requester for payment.

(2) *Photocopying fees.* The following are charges for photocopies of public records made by Commission personnel:

(i) *Standard sized, black and white copies.* The charge for copying standard sized, black and white public records shall be \$0.15 per printed page (*i.e.*, single-sided copies are \$0.15 and double-sided copies are \$0.30). This charge applies to copies on the following standard paper sizes:

- (A) 8.5" × 11";
- (B) 8.5" × 14";
- (C) 11" × 17".

(ii) *Color copies/printouts.* The charge for color copies or color printouts shall be as follows:

- (A) 8.5" × 11"—\$1.00 per page;
- (B) 8.5" × 14"—\$1.50 per page;
- (C) 11" × 17"—\$2.00 per page;

(D) The charge for all color copies larger than 11" × 17" (including, but not limited to: photographic imagery, GIS print-outs, and maps) shall be calculated at the rate of \$2.50 per square foot.

(iii) *Electronically generated records.* Charges for copying records maintained in electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.

(iv) *Other copying fees.* The Commission, at its discretion, may arrange to have records copied by an outside contractor if the Commission does not have the resources or equipment to copy such records. In this instance, the

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requester will be liable for payment of these costs.

(3) *Forwarding material to destination.* Postage, insurance, and special fees will be charged on an actual cost basis.

(b) No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.

(c) Payment shall be made by check or money order payable to "Delaware River Basin Commission" and shall be sent to the FOIA Officer.

[40 FR 14056, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975. Redesignated at 52 FR 37602, Oct. 8, 1987, as amended at 67 FR 56753, Sept. 5, 2002]

§401.111 Waiver of fees.

(a) No fee shall be charged for disclosure of records pursuant to this part where:

(1) The records are requested by a congressional committee or subcommittee or the General Accounting Office.

(2) The records are requested by an agency of a signatory party.

(3) The records are requested by a court of competent jurisdiction.

(4) The records are requested by a state or local government having jurisdiction thereof.

(b) No fee shall be charged if a record requested is not found or for any record that is totally exempt from disclosure.

§401.112 Exempt information.

The following materials and information covered by this part shall be exempt from disclosure; that is, information that is:

(a) Related solely to the internal personnel matters of the Commission;

(b) Specifically exempted from disclosure by statute;

(c) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. (For purposes of this section a trade secret may consist of any formula, pattern, device, or compilation of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. Commercial or financial information that is privileged or confidential means valuable data or information which is used in

one's business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.)

(d) Inter-agency or intra-agency memorandums or letters other than purely factual compilations, which would not be available by law to a party other than an agency in litigation with the Commission;

(e) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(f) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel.

[40 FR 14056, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975. Redesignated at 52 FR 37602, Oct. 8, 1987, as amended at 63 FR 45943, Aug. 28, 1998]

§401.113 Segregable materials.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this part, except as provided in §401.92.

§401.114 Data and information previously disclosed to the public.

Any Commission record that is otherwise exempt from public disclosure pursuant to this part is available for public disclosure to the extent that it contains data or information that have previously been disclosed in a lawful manner to any member of the public, other than an employee or consultant or pursuant to other commercial arrangements with appropriate safeguards for secrecy.

§401.115 Discretionary disclosure by the Executive Director.

(a) The Executive Director may, in his discretion, disclose part or all of